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For Mr. Worthington C. Ford
With kindest regards of
T. H. O'Brien.

Mississippi's First Constitution and Its Makers

DUNBAR ROWLAND

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Vol. VI.

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Mississippi's First Constitution and Its Makers

DUNBAR ROWLAND

Reprinted from Publications of Mississippi Historical Society, Vol. VI.

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W. C. Ford.

§ 2. All political power is inherent in the people, and all free governments are founded on their authority, and established for their benefit; and, therefore, they have at all times an unalienable and indefeasible right to alter or abolish their form of government, in such manner as they may think expedient.

§ 3. The manner and enjoyment of religious professions and worship, without discrimination, shall forever be free to all persons in this State: Provided, that the right hereby declared be not so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

§ 4. No preference can ever be given by law to any religious sect or mode of worship.

§ 5. No person can be molested for his opinions on any subject whatever, nor suffer any civil or political incapacity, or acquire any civil or political advantage, in consequence of such opinions, except in cases provided for in the constitution.

§ 6. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§ 7. No law can ever be passed to curtail or restrain the liberty of speech, or of the press.

§ 8. In all prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party must be acquitted; and the jury have the right to determine the law and the facts.

§ 9. The people are to be secure in their persons, houses, papers and possessions from unreasonable seizures and searches; and no warrant to search any place, or to seize any person or thing, can issue without describing the place to be searched, and the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath or affirmation.

§ 10. In all criminal prosecutions the accused has a right to be heard by himself or counsel, or both; to demand the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and in all prosecutions by indictment or information, a speedy public trial by an impartial jury of the county where the offence was committed; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, but by due course of law.

§ 11. No person must be accused, arrested or detained, except in cases ascertained by law, and according to the form which the same has prescribed; and no person can be punished but in virtue of a law established and promulgated prior to the offence and legally applied.

§ 12. No person can for any individual offence be prosecuted against criminally by information, except in cases arising in the land and naval forces or in the militia when in actual service, or by leave of the court, for misdemeanor in office.

Photographic copy of a page from the manuscript of the first Constitution of Mississippi on file in the Department of Archives and History.

MISSISSIPPI'S FIRST CONSTITUTION AND ITS MAKERS.

By Dunbar Rowland.[1]

A recent visit to the little village of Washington, in Adams county, Mississippi, was so interesting from an historical view to me that I feel prompted to tell the story of what was done there eighty-five years ago in giving Mississippi its first organic law.

A sentimental interest always attaches to those places where history was made no matter how isolated and obscure they may be made by the changes wrought by a restless people. Independence Hall stands surrounded by the marble magnificence of a great modern city and looks poor, indeed, when compared with the stately structures of the "City of Brotherly Love," yet that little homely building of brick is dearer to the hearts of the American people and means more to them than all the priceless palaces of a great city.

The little village of Washington may have been forgotten and the historic memories which gather about it and hover over it may be growing dim in the minds and hearts of those who should cherish and love them, if so then this monograph may revive an interest in and a love for the place where the State of Mississippi had its birth, where its first Constitution was made, where our pioneer forefathers began the great work of State building and may remind this generation of the great and noble deeds of the fathers of the State.

The ruins of the little brick Methodist church of Lorenzo Dow, where the Convention met, are still to be seen on the campus of Jefferson College; the college yell is now to be heard where formerly the voice of wisdom resounded, and the measured pace of drilling cadets and the merry shouts of boyish voices have taken the place of the slow and thoughtful walk and talk of the lawmaker and statesman. ,

In its early history Mississippi shone resplendent with talent and learning. If out of a bright galaxy of great names only a few

[1] A sketch of the author of this article will be found in the *Publications of the Mississippi Historical Society*, Vol. III., p. 85.—Editor.

are mentioned here it is hoped that it will not be considered invidious, or cause an envious pang to read of their well-earned fame. There are hundreds of others equally noble and true, whose characters are like the fresh and gentle flowers of a spring garden—too sweet and modest to seek brazen fame.

It is the sacred duty of the State to cherish with vestal watchfulness such men. Our true and lasting glory hangs on the lives and characters of our great men.

"Like fabled gods, their mighty war
Shook realms and nations in the jar."

The State of Mississippi became a member of the Federal Union December 10th, 1817. The "Enabling Act," giving the Territory of Mississippi authority to form a Constitution and organize a State government was signed by President Madison March 1st, 1817. The first Constitutional Convention met at Washington, the Territorial capital, July 7th, 1817. A study of the membership of that Convention, of the men who were delegates to it, of their traits, appearance, ideas and characteristics will reveal something of the manly, sturdy, pioneer state-makers and nation builders who were but types of the founders of all the Southern States.

The discussion and analysis of the organic law itself will be reserved for future publication. Before taking up the main purpose of the story it will be well to tell something of Washington, where the Convention met. The best description of the little Territorial capital as it was in 1817 is given by Claiborne in his *Mississippi as a Province, Territory and State.* It is thus graphically described by that historian:

"The little town of Washington, six miles east of Natchez, in a rich wooded and picturesque country, was the seat of government. The land offices, the Surveyor General's office, the office of the Commissioners of Claims, and the courts of the United States were all there. In the immediate vicinity was Fort Dearborne and a permanent cantonment of United States troops. The highest officials of the Territory made it their residence, and many gentlemen of fortune attracted by its advantages went there to reside. There were three large hotels, and the academical department of Jefferson College inaugurated by Governor Claiborne was in successful operation. The society was highly cultured and refined.

The conflicting land titles had drawn a crowd of lawyers, generally young men of fine attainments and brilliant talents. It was a gay and fashionable place, compactly built for a mile or more from east to west, every hill in the neighborhood being occupied by some gentleman's chateau. The presence of the military had its influence on society; punctillo and ceremony, parades and public entertainments were the features of the place. It was of course the haunt of the politicians and office hunters; the center of po-

litical intrigue, the point to which all persons in pursuit of land or occupation first came. Washington was famous for its wine parties and dinners, usually enlivened by one or more duels directly afterward."

Such were the surroundings of the men who gave Mississippi her first Constitution and pointed out the way to future success and greatness.

The Convention met on the day set apart by law and organized by the election of David Holmes, the Governor of the Territory, president, and Louis Winston, a scholarly lawyer secretary.

The country was new and it might be supposed that the members of the first Constitutional Convention of Mississippi were rude unlettered frontiersmen with little culture and less learning. If such an idea prevails now it is not in keeping with the facts of history.

The first settlers of Virginia represented the best blood of the aristocracy of England; the Pilgrim Fathers who landed on the bleak and cheerless shores of Massachusetts Bay belonged to the great middle class of the mother country; the Mississippi pioneers came from both elements. They had the generous impulses of the one combined with the sturdy independence of the other.

It is generally supposed that the early settlers of Mississippi came altogether from a southern source, but that idea is far from the facts. The men and women who made Mississippi came from Maine, Massachusetts, New York and Pennsylvania as well as from Virginia, the Carolinas, Georgia and Tennessee.

The Convention consisted of forty-seven delegates representing fourteen counties.[2] The following list is taken from original sources:

Adams County—David Holmes, Josiah Simpson, James C.

[2] Biographical notes and sketches of the following members of this Convention will also be found in Claiborne's *Mississippi as a Province, Territory and States*—David Holmes (pp. 302-3); Josiah Simpson (p. 352); James C. Wilkins (p. 353); John Taylor (pp. 353-4); Christopher Rankin (p. 354); Edward Turner (p. 354-5); Joseph Sessions, John Steele, H. I Balch, Joseph E. Davis, John Ford, Dougal McLaughlin, and Noel Jourdain, (p. 355); Amos Burnet, James Patton, Clinch Gray, Laughlin McKay, John McRae, John McLeod, Thomas Bilbo, Harman Runnels and Walter Leake (p. 356); Thomas Barnes, Joshua G. Clark, Henry D. Downs, Gerard C. Brandon, Abram M. Scott, Daniel Williams, John Joor, Joseph Johnson, and David Dickson (p. 357); Cowles Mead (pp. 275-7); George Poindexter (pp. 361-414); and W. M. Lattimore (pp. 262-3, note).—Editor.

Wilkins, John Taylor, Joseph Sessions, John Steele, Christopher Rankin, Edward Turner.

Jefferson County—Cowles Mead, H. J. Balch, Joseph E. Davis, Cato West.

Wilkinson County—George Poindexter, Daniel Williams, Abram M. Scott, John Joor, Gerard C. Brandon, Joseph Johnson.

Amite County—Henry Hanna, Thomas Batchelor, John Burton, Thomas Torrance, Angus Wilkinson, William Lattimore.

Claiborne County—Walter Leake, Thomas Barnes, Daniel Burnet, Joshua G. Clarke.

Pike County—David Dickson, William J. Minton, James Y. McNabb.

Marion County—John Ford, Dougal McLaughlin.

Hancock County—Noel Jourdan, Amos Burnet.

Wayne County—James Patton, Clinch Gray.

Greene County—Laughlin McKay, John McRae.

Jackson County—John McLeod, Thomas Bilbo.

Warren County—Henry D. Downs, Andrew Glass.

Franklin County—James Knox, John Shaw.

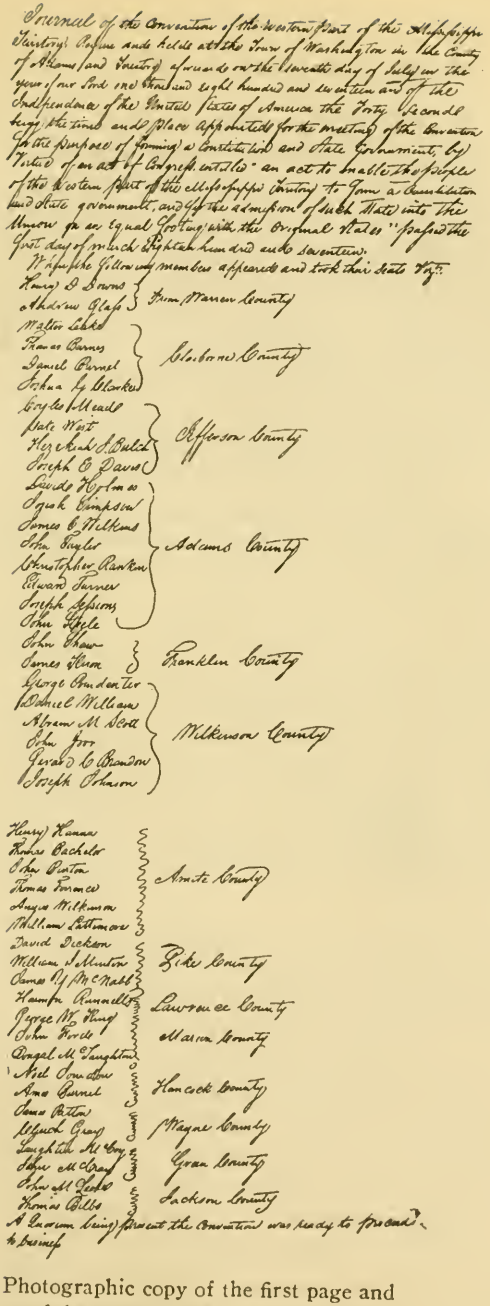
Lawrence County—Harmon Runnels, Geo. W. King.

David Holmes, the president of the Convention, was a good composite type of the entire body. The membership represented faithfully the two great types of American life—the Northern, with its industry, business capacity and fortitude, and the Southern with its capacity to govern, its courage, brilliancy and dash.

David Holmes was a product of the two types. His father was from Pennsylvania, his mother was a Virginian. The father of David Holmes was the commander of a regiment in the patriot army of the Revolution, his mother was a Miss Hunter of a family in Virginia that has given many historic names to the country.

David Holmes was born in York county, Pennsylvania, March 10th, 1769.[3] When he was an infant his parents moved to Winchester, Virginia. There were three sons born to the Holmes family. The oldest was Judge H. H. Holmes, a justice of the General Court of Virginia for twenty-five years. The second son was Col. A. H. Holmes, a brave officer of the American army who was killed in Canada during the War of 1812. David Holmes was the youngest son of this distinguished family. In his youth

[3]Some authorities claim that Governor Holmes was born in Virginia.



Photographic copy of the first page and part of the second page of the manuscript journal of the Mississippi Constitutional Convention of 1817 on file in the Department of Archives and History.

he had the advantages of a college training; after he reached maturity he read law and began the practice in Virginia. Before he was thirty years old he was elected to Congress. President Madison appointed him Governor of Mississippi Territory in 1809. His appointment caused many of his Virginia friends to go with him to the new country. After a service of eight years as territorial governor he was elected a delegate to the Constitutional Convention and made its presiding officer. Governor Holmes presided over the Convention with dignity, tact and ability. He served Mississippi faithfully for about eighteen years as Governor and United States Senator. In 1827 he returned to his boyhood home at Winchester and died there in 1832.

Governor Holmes was not a man of pre-eminent ability, he might truthfully be termed a plodder, a name which has been given to the highest type of genius—a man who can work and will and win.

George Poindexter, a delegate from Wilkinson county, was the master-mind and admitted leader of the Convention. He has been pictured as the meanest man who was prominent in the early history of Mississippi; there is little doubt that he was the intellectual if not moral leader of that time. He lived during a period when bitter, partisan political feeling was indifferent alike to the rules of courtesy and fair dealing, and much of the slander and infamy heaped on Mr. Poindexter was doubtless the work of his personal and political enemies.

The mantle of charity is thrown over his faults, he did a great work for Mississippi in spite of them. Time has now tempered the harshness of the judgment of the moral characteristics of George Poindexter. He was a Virginian by birth and was the son of a brilliant Baptist preacher. He studied law, was admitted to the bar, came to Mississippi in 1802 and located at Woodville, Wilkinson county. His unusual ability and brilliancy as a lawyer and advocate caused Governor Claiborne to appoint him Attorney-General of the Territory during the first year of his residence. Six years later he was elected by the Legislature to represent the Territory in the Congress of the United States. He was Congressman six years and gave up the position to accept a seat on the Supreme bench of the Territory. He was elected a delegate to the Constitutional Convention and made chairman

of the committee appointed to submit a draft of a proposed constitution to the general Convention for adoption. The constitution which was finally passed was mainly the work of Judge Poindexter. After the State was admitted to the Union he became, in 1820, the successor of Governor Holmes, and was elected to the United States Senate in 1830. Judge Poindexter attained the highest honors in the executive, legislative and judicial departments of the State government, and few Mississippians have been so signally honored.

Judge Poindexter had wonderful mental vigor and intellectual grasp. He has left his impress on the jurisprudence of Mississippi which time cannot efface.

Louis Winston, the Secretary of the Convention, was a scholarly young lawyer from Virginia who had come to the new State in search of fame and fortune. He was a member of the famous Winston family of Virginia, many of whom have shed honor on State and Nation. The young lawyer made an ideal secretary, he was careful, courteous and courtly, and his bearing in the Convention afterwards made him a leader in the new State. Winston county perpetuates his name and fame, and Louisville, the county seat was named in his honor.

Walter Leake was a member from Claiborne county. He was a careful, industrious, pains-taking lawyer who had come to Mississippi through the Federal government as a member of the Territorial Supreme Court. Judge Leake was one of the working members of the Convention. He was a native of Virginia and had much of the ease and polish of manner common among the country gentlemen of that State. Judge Leake and Thomas H. Williams were the first United States Senators from Mississippi. After serving three years in the Senate he resigned to become Governor of the State. His political career being almost an exact counterpart of that of George Poindexter. During the administration of Governor Leake the State Capitol was finally located at Jackson. He died during his term of office and his remains rest in the peaceful shades of the little college town of Clinton.

Gerard C. Brandon, a delegate from Wilkinson county, was probably the only native Mississippian in the Convention. He was born in Adams county in early Territorial days and was a large land owner and planter. His father was one of the pioneer

State-makers of what was then called the great Southwest. Governor Brandon was a cultured man of high character and his work in the Convention won the confidence and admiration of the people to such a degree that they called him to fill the highest offices in the new State. He was twice elected Lieutenant-Governor and in both instances filled out the unexpired term of his chief. The first was caused by the death of Governor Leake, the second by the resignation of Governor Holmes. In 1827 he was elected Governor, and re-elected in 1829. Governor Brandon was one of the purest and best men of Mississippi. After faithful public service he returned to his plantation in Wilkinson county respected and loved by all the people. His last public service was in the Constitutional Convention of 1832.

Cato West, of Jefferson county, was one of the most attractive and picturesque members of the Convention. He was one of the largest planters and slave owners of the Territory, and may be well taken as the representative of its aristocracy. He was a Virginian and was born in the famous old county of Fairfax. The ancestors of Col. West were men and women of distinguished lineage. His father was a wealthy country gentleman of the "Old Dominion," and gave his son all the advantages that riches could bestow. Col. West came to Mississippi in the early days of the Territory and made his home at Pickering, in Jefferson county. When W. C. C. Claiborne was appointed Governor of Mississippi Territory by President Jefferson in 1801, Col. West was appointed secretary. In 1803 Governor Claiborne was appointed by President Jefferson one of the commissioners to receive the Louisiana Territory from France and during the absence of the Governor, Col. West was the acting executive of the Territory. He was an elegant gentleman, a forceable and eloquent speaker and was one of the leaders in the early development of Mississippi.

Among the able men that Adams county sent to the Convention Christopher Rankin stands prominent. He was a leader of the Natchez bar when the "Enabling Act" was passed. Pennsylvania was his native State and like many other cultivated young men of the North came South as a school teacher. While teaching a country school in Georgia he studied law and after passing a satisfactory examination was admitted to the bar. The young

lawyer located at Liberty in Amite county in 1809. Natchez was then the metropolis of the Territory, and Mr. Rankin located there in 1809. He had grown to be one of the great lawyers of Mississippi in 1817 and was a leader in all public affairs. He was one of the ablest men in the Convention and his learning and wisdom were felt. After the adoption of the constitution and the organization of the State government Mr. Rankin went before the Legislature as a candidate for United States Senator and was defeated by Judge Walter Leake. He was afterward elected to the lower House of Congress and served three terms. Rankin county was named in his honor.

Cowles Mead was a brilliant member from Jefferson county. He had a somewhat sensational but highly honorable career before coming to Mississippi. Virginia was his native State. Georgia became his home in early life. He was admitted to the bar when very young and soon became prominent as an active partisan follower of Thomas Jefferson. His party nominated him for Congress as soon as he became eligible and the contest that followed resulted in his receiving the certificate of election together with a notice of contest. The contest resulted in the seat being given to his opponent. He was at once appointed secretary of Mississippi Territory by President Jefferson and came to Natchez to discharge the duties of the office. He was acting governor of the Territory in 1807, when Aaron Burr was arrested on Mississippi soil and charged with a conspiracy to disrupt the Union. Mr. Mead handled the Burr case with tact, good judgment and ability. In the Constitutional Convention he made a great reputation as a brilliant, emotional and showy speaker and an able parliamentarian. Governor Meade was Speaker of the Legislature in 1823-'24-'25. Meadville, the county seat of Franklin county, serves to honor and keep alive his memory.

John Taylor, of Natchez, was one of those men who succeed in spite of all obstacles. He had no early advantages of birth, education or wealth. He was born in Pennsylvania of poor and honorable parents. With the help of some kind lawyer friends he managed to obtain license to practice law. The friendless young lawyer drifted down the Mississippi from St. Louis and located at Natchez in 1805. He was willing to work and soon found something to occupy his professional talents. After a res-

idence of twelve years at his new home Mr. Taylor was one of the prominent lawyers of the Territory and was selected to represent his county in the Constitutional Convention. Judge Taylor was the first Chief Justice of the Supreme Court of Mississippi.

Josiah Simpson, a delegate from Adams county, was one of the great lawyers and jurists of the Convention. He was a university man, an accomplished scholar and a graduate of Princeton. Like Governor Holmes, Judge Simpson was born in Pennsylvania and married a beautiful woman of Virginia. He came to Mississippi in 1812 by appointment of President Madison as a member of the Territorial Supreme Court. Judge Simpson was a valuable member of the Convention, his culture and learning were in constant demand on all important committees. One of the old historic homes of Natchez is Devereaux, the old home of Judge Simpson. It is beautiful in its loveliness and has many sweet memories clustering around it.

Edward Turner, of Natchez, was a strong worker and leader of the Convention. He had many honors conferred on him while Mississippi was a Territory and they were increased when the State was admitted to the Union. He was an elegant, cultured Virginia gentleman and was the son-in-law of Col. Cato West. He served the Territory and State as Clerk of the Legislature, Register of the Land Office, Attorney General, Circuit Judge, Chancellor, Congressman, and Chief Justice of the Supreme Court. Judge Turner brought great legal learning into the Convention and with Poindexter, Rankin, Taylor and Leake as his co-laborers he did much of the actual labor and toil of its proceedings.

One of the most accomplished and interesting delegates was Noel Jourdan, of Hancock county. He was a scholar of unusual attainments, a man of the world who had seen and appreciated much of the knowledge and culture of Europe, and a lawyer learned and profound. Mr. Jourdon was the son of a French sergeant who came to America with the army of Count Rochambeau to aid the patriots of the new world in their fight for freedom. After the surrender of Lord Cornwallis Sergeant Jourdan decided to quit the French service and become a citizen of the country that he had fought to free. He located in New Orleans and established a French bakery that soon became famous and made its owner rich in a few years. The wealthy baker finally

retired from business and went to live in the lovely coast country of Mississippi in Hancock county. To make his son a learned man and an accomplished scholar became the aim of his life. Noel Jourdan was sent to Paris in his early manhood and was kept there until he had acquired all the culture of the then intellectual center of the world. On his return to America he at once became the leader of the coast counties and was the chosen champion of their interests in the Convention. Mr. Jourdon was inspired by pure and high ideals of true and just government and his efforts for his State were guided always by them.

Dr. William Lattimore was one of the delegates from Amite county. He was a scholarly, scientific physician who had come from Virginia to Mississippi in the "flush times" of the Territory. Dr. Lattimore had a talent for politics, and had represented the Territory in Congress for several terms. He was in Congress at the time of the passage of the "Enabling Act" and was largely instrumental in having the Territory admitted to the Union. His last public duty was the location of the State Capitol at Jackson in 1822 in connection with Gen. Thomas Hinds and Judge Peter A. Van Dorn.

Joseph E. Davis, of Jefferson county, came from Kentucky and located at Greenville. Mr. Davis was a profound lawyer and scholarly man. He was the elder brother and guardian of Jefferson Davis. The President of the Confederacy pays this tribute to his brother:

"He was a profound lawyer, a wise man, a bold thinker, a zealous advocate of the principles of the constitution as understood by its founders, with a wide-spreading humanity which manifested itself especially in a patriarchal care of the many negroes dependent upon him, not merely for the supply of their physical wants but also for their moral and mental elevation, with regard to which he had more hope than most men of his large experience. To him materially as well as intellectually I am more indebted than to all other men."

James C. Wilkins, of Adams county, was an admitted force in the Convention. He was the richest merchant of the Territory and represented the business interests. Mr. Wilkins was a native of Pittsburg, Pennsylvania. He came to Natchez and married into the Minor family and soon became prominent in public affairs. He was a soldier in the Mississippi Volunteers and shared the glories of Gen. Jackson's victory over the English at New Orleans.

Abram M. Scott was another delegate to the Convention from Wilkinson county, who became Governor of Mississippi. He was a native of South Carolina. In the Creek War he commanded a company of Mississippi troops and did valiant service under Gen. Andrew Jackson. Governor Scott was a genial man of ability, courage and high character. He served two terms as Lieutenant-Governor and succeeded Governor Brandon in 1832.

Gen. John Joor, of Wilkinson county, was the most fascinating and picturesque figure on the floor of the Convention. While he was a man of wealth and breeding he was social and democratic in his life. Gen. Joor came to Mississippi from South Carolina and was a descendant of one of the best old Huguenot families of the State. He was a typical Southerner of the old time when dueling and fire-eating were the most popular diversions of the day.

Joshua G. Clark was one of the able delegates from Claiborne county. Born in Pennsylvania he came to Mississippi Territory to practice law and soon attained high rank at the bar. He was one of the best legal minds in the Convention and did faithful service by his wise advice and counsel. Judge Clark was the first Chancellor of the State, and his service on the bench was honorable and upright.

Harmon Runnels came to Mississippi from Georgia. He had been a fighting captain in the Continental Army and was a ready, forceful, strong character. He founded a family that became very influential in the State. The home of the Runnels was Monticello, Lawrence county. One of his sons, Hiram G. Runnels, was elected Governor in 1831.

Dougal McLaughlin, of Marion county, was a son of North Carolina and was a descendant of a hardy Highland clansman of bonny Scotland. He was a grand old man with all the virtues of his race.

Gen. James Patton represented Wayne county. He was a soldier, lawyer and orator of courtly manners and distinguished bearing. He was afterward elected Lieutenant-Governor of the State.

Col. Daniel Burnet represented Claiborne county. He came to the Southwest when Mississippi was a Spanish Province as an expert surveyor and after its admission into the Union served his people with fidelity in many public positions of honor and

trust. Col. Burnet was one of the most faithful of the early pioneers.

The men who gave Mississippi her first constitution belong now to an almost forgotten past, to a time that may be said to be the romantic period of the State's history. It is well to remember them. They belong to a time that can never be reproduced, it was indeed heroic. They had many of the noblest virtues of men. They represented a phase of Mississippi life which gave to succeeding generations a type of man that excites the admiration of all men. In many of them the rural simplicity of the plowman was combined with all the graces and accomplishments of the man of the world. All had a passionate fondness for state-craft, oratory and politics. They were high strung, passionate and quick to take offense; they were men of superb courage, unmoving integrity and unsullied honor.

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